

MEETING ON SAND AND SULPHUR CREEK HELD AT LOA AUGUST 25, 1977 AT 1:00 P.M.

The problem on Sulphur and Sand Creeks is many fold; (1) We do not have a good record of everyone who claims water and we would like to get this at the meeting. (2) The ditches do not have any measuring devices or headgates. Therefore I will give you our estimates since there are no facilities to properly measure. The Commissioner has made several trips over the system this year and Mark Page and LaMond Gardner also went over the system to double check.

We were contacted by the Park Service concerning the problems on Sulphur and Sand Creeks. We agreed to go over the problems and get acquainted with them. If you people feel it is desirable we will include it in the Fremont System under the regular commissioner and carry it along with the regular system and have him regulating the water use. Now to give you an idea of the number of measurements and trips he made up to the 27th of July.

<u>DATE</u>	<u>PARK SERVICE</u> cfs	<u>LOWE</u> cfs	<u>MILEAGE</u> Miles	<u>TIME</u> hrs.
4/11			6	3
4/15	2.00	0.75	6	3
4/27	0.00	0.40	3	1
5/4	0.75 (1	1.00	3	1
5/9	0.75 (1	0.50	3	1
5/21	1.50	0.75	5	1
5/25 (3			5	1
6/6	1.50 (4	1.00		
6/15	0.60	0.50		
6/28	1.50	0.75	10	2
7/6	1.50 (4	0.80	3	0.5
7/14	0.50	0.70	3	0.5
7/20	0.60	0.75	3	0.5
7/27	0.00 (4	1.00	3	0.5

(1) 0.25 cfs going past.

(2) 0.50 cfs going past.

(3) Sand Creek dry except return flow below D. Pace 1.5 to 2 cfs.

(4) 2.00 going past.

Grant can you give the August measurements that you have.

Grant Chappell: I only checked it on August 19th and there was about .16 sec. ft. at Mr. Lowe's; there was about a foot for the Park Service and about .50 going past.

Don: Thank you, Mark can you brief up what you have?

Mark: LaMond and I were here on August 11 and we measured at the Park Service diversion. And in the Creek going past the low diversion coming out of Sand Creek and Sulphur Creek it was .557 and it was .136 being taken out of the East side of Sulphur Creek, and there was some return flow coming out of Don Pace's. It was dry below Don's but we also went out of town when sign points to Sand and Sulphur Creek and at that point the creek was dry. The city overflow and what was being diverted out of the creek above was close to .25 sec.-ft.

Nielsen: How did you make the measurement?

Mark: With a cipolletti weir.

Chappell: I made my measurements from the experience I have had measuring water and with estimates. No timing or tape measures.

Don: We have been contacted by the different identities and we should hear from them as to the problems they have been having. Is there anybody here claiming rights that we haven't mentioned?

Lowe: There is nobody here. All of these folks are predecessors in interest to the Lowe rights or have been around here forever.

Don N.: Do we have all of the ditches covered that take water?

Lowe: Don and I are the only ones that take water other than the cities.

Don N.: Then we have 4 identities and we will call them Pace, Lowe, the city, and Park Service.

Norseth: How much has been in their diversions this year?

Don Pace: Practically nothing.

Norseth: Well we measured .25 sec.-ft.

Don Pace: By the time it get to town its nothing. This is an abnormal year. Usually there is a foot or foot and a half or two and during the day there is nothing. At night maybe an eight of a foot.

Norseth: Is there any other discussion on this.

Lowe: I don't know what you had in mind but our rights are prior to the Park's rights and the Park has filed a due diligence claim 71 years after they were supposed to be using it in 1902. There was no notice neither to Don, I or anyone else on the creek of that due diligence claim. When I checked with the State Engineer's office before I bought the property I found nothing other than Don's and my rights and the city's. Then sometime in 1975 when the Parks filed their diligence claim they came and asked to turn water to them which we have always done over the 1 sec.-ft. But we have always claimed that 1 sec.-ft. We filed 4 affidavits counter to their 2 affidavits they filed with their diligence claim. All of the people that signed those affidavits with one exception are here today. We set out that there was not water down there other than high water and flood water until the Torrey Canal Co. came in in 1905. We operated on a basis that Certificates from the State Engineer's Office had the priorities set out on them. In 1973 the Park Service asked us to turn them water. We did not dip into our second foot and at times we took less than that. Our estimates were made on the conservative side just be be safe. They came down and informed Rulon Hunt who was leasing the water from me that he was "stealing water". They had an FBI man with them and after frightening him to death he stood by while they destroyed the diversion. The park was informed sometime later by my brother and a request was made that they divide the water or some such thing until I could get back and some determination made. In the meantime Mr. Hunt lost two crops of hay because whenever he put in a diversion it would be destroyed. He believed it to be done by the FBI and I told him that it was a civil matter and how it was to be handled. When I first came back I found that they had been destroyed the night before and went down to the park and found that they were diverting over a second foot and that they were running away another second and a half foot and I have pictures of that. I requested at that time that I have a meeting with Mr. Wallace and we could arrange things until a determination could be made as to the water rights. I was to meet Mr. Wallace on a Friday but when I went down he had gone to Richfield because of a toothache. I went Saturday and he wasn't available. I went Monday and he wouldn't see me. A Ranger talked to him and said he would see me Tuesday. I'd been there four days and I wouldn't stay till Tuesday. The was remained out until this year. I told Mr. Hunt to take the water and until the 11th he never took more than a second foot as his instructions were to be on the conservative side. I was away again and was informed that on the 10th of August the diversion was destroyed and the pipes and sandbags were in an area where any kind of flood could wash them away. It is our position, Mr. Pace and myself that we have valid certificates issued by the State and that the diligence claim filed by the park is nothing more than a claim and the statute says that the affidavit is nothing more than prima facie evidence which can be contradicted by other evidence. We have filed four counter

affidavits a year ago and since that time we have attempted to take our second foot of water or close to it. We would like to take evidence at this hearing or some other hearing from all of these people who have given affidavits as to their substance. We would also like to cross examine the people who filed the affidavits for the park. All affidavits indicate there was not water except high water until Torrey Canal which was 1902, 1912 and subsequently 1926 before Torrey Canal Co. We have people here who helped build the Torrey Canal, discovered Goblin Valley, and operated the Hite Ferry and was constantly down through that country and back before 1900. Our position is that we are entitled to the first second foot of water on the lower end. One of these 3 second feet is winter water. The one sec.-ft. is the only one that has been interfered with and we claim the 3 sec.-ft. set by the priority and that they are prior to the park because the park does not have a due diligence claim. We also claim that they never received any water and did not use it for over five years at a period of time.

Norseth: Have you been diverting anything on this 3 sec.-ft under this certificate?

Lowe: We take it out above the Pace place and we use it for two weeks and he uses it for two weeks.

Norseth: What bearing does the Torrey Canal have on it?

Lowe: All of it. Before the canal there was no constant water running down Sand Creek below where Torrey City takes it. Torrey Canal brought the excess water that is running by my place and into the park. It took about 3 years of the canal to soak up that ground and then some springs arose after that. There was no constant flow before that and there isn't now if no one is irrigating.

Chaffin: I helped put in the canal about 1913 and the flow rose about 3 times to what it was before. Before that Sand Creek was dry.

Pace: The Torrey Canal started up at the Chaffin place at about 1904 but reached Torrey Town about 1912. It was in the 40's that it got to be the size that it is. There was no drainage or seepage because there was no water there to make any. Since 1937 I have never had the park service ask to divert any water and the seepage that is there now is the wastewater off my own ground. I have no claim on Sand Creek but I don't think the park service or anyone else has any claim on my wastewater.

Nielson: As you say the Park Service has two affidavits of water use which we base a diligence claim on the time priority. One affidavit is made by a State Senator and former river commissioner in which he says that in the 1900's there was enough water diverted from Sand Creek as to grow crops as referring to the Brimhall land which was estimated to be about 1/4 to 1-1/2 sec.-ft. during the irrigation season. Meeks, Motte and Aldren all diverted and used said water during the season of each year from 1902 to 1940. We'll put our two affidavits against your four and litigate that issue. These affidavits were recorded with the Loa County Recorder in 1966. We claim the first second foot of water that comes down Sand and/or Sulphur Creek. One thing I want to point out is that the water being diverted by Mr. Lowe is being crossing over public domain. Since this is a separate issue we out to negotiate since Mr. Lowe could be enjoined from making use of his water.

Lowe: It's true it's going across BLM land but it was private land to begin with and was traded to make this ranch. There was not reservation for a right of way but under the requirements as you well know an examination of the BLM must be made so they know what they are trading for. There was a ditch across there since the Torrey Canal developed.

Norseth: When was the trade made?

Lowe: Well I don't know but Clarence Mulford made the trade and he would know. I don't think that is here nor there I made the filing clear back and

I don't think the BLM is going to take the ranch when it was built on that basis. An examination was made by the Soil Conservation on that diversion and they prepared a plan for development using that diversion. They offered the plan to Mr. Mulford and the farm was operated under that plan. I filed a petition on the diversion after I found out there could be a problem with the BLM. They said they couldn't get to it yet but to go ahead and divert from BLM land as always until they gave us some written order to the contrary. The order came from the Richfield office to the Hanksville office so we continued on that authority. There is an application in with BLM for diversion and right of way. That's been in there since 1927 because that's when the engineering was done. I will agree that it doesn't have to be a constant stream year round to be a valid appropriation by the park. If it's during the summer months when they could use it that is sufficient. All these people have said that it was dry except in a flood state. Mr. Chaffin had the ranch that Mr. Pace has and knows it could only be developed after the Torrey Canal. I checked the Park last night and they were taking the whole stream which I would say is better than a second foot. They were not running anything down. They tore out our Sand Creek water so I have a little from Sulphur which would probably be less than a tenth of a second foot.

Norseth: Don, did you have any out last night and how much?

Pace: Sure, all I could get and that was about a foot and a half and part of that is canal water that I've got turned down out of a siphon. There's never been any water in Sulphur Creek and I wonder by Sand Creek do they mean my wastewater or seepage. The filing doesn't designate.

Nielson: I wonder if we all agree on which is called Sand Creek and which is called Sulphur Creek.

Norseth: We have a U.S. Quadrangle Map here. Are we all agreed that the Creeks are geographically correct as shown on this quadrangle map. (All agreed)

Pace: But what I want to know is that is the filing on.

Norseth: The problems is that the filing is on the 2 creeks after they come together and down by the confluence where they are collectively known as Sand and Sulphur Creek. The filing is made at the confluence after they joint about 7 miles inside the park.

Lowe: It doesn't matter because every bit of that water that is going down there is Pace's waste water and what matters is that there was no water in there in 1902.

Norseth: Any water that goes into the channel then becomes a natural supply to that creek.

Lowe: And that is what was issued to us in 1927 subject to prior rights. And the existing rights could have only been to high water. These certificates were issued to us before any diligence claim was made and no objections were raised at that time.

Nelson: We do not deny the validity of your claim only that we have got to get our second foot and then you get your second foot.

Lowe: And we do not agree on that because there was not a second foot down there at that time.

Norseth: At this time we cannot determine whether this diligence claim is valid or not, therefore we have an interim period in which is it possible that everyone can work something out that they can live with.

Pace: I haven't turned any water down to the park in 40 years and I ain't about to now.

Norseth: We may have to order some Don.

Pace: I own that water and that's all I have and I have a filing on it.

Lowe: That is what I use, without it I would have none.

Pace: I have one diversion.

Lowe: I have two, one of which I share with Don. Don is entitled to 3 sec.-ft. and he takes his for 2 weeks and I do the same. My diversion is the lower one.

Norseth: The park service has one diversion. The park service does not want any of Don's water. All we are interested in is the Park Service and your lower diversion.

Lowe: We could split it.

Norseth: Would a 50-50 split on an interim basis be acceptable?

Lowe: We will split it but I want to say that any changing or destroying of diversions is a misdemeanor.

Nelson: That's right and we are both guilty of that and if the diligence claim proves to be valid it would have been a misdemeanor to go and divert any water that was necessary to satisfy this right. Just for the record we have no intention of calling the FBI and involving them in the future.

Lowe: We had half of Torrey afraid to move because of the FBI.

Norseth: To determine this we are going to have to sum up what is available at both points of diversion and then split half. Grant can we do that. Is your diversion such that he can release water through it or close it if you don't have your half to put more in.

Lowe: I think so but right now we can't divert. We'll need a weir. I would like it to be fixed with Grant's approval. We'll put in a weir with the State Engineer's approval. Since half will be diverted to the park I think they can pay half.

Norseth: Say about 2 weeks. Mark will be available to work with you. Mark what type of weir do you think?

Mark: A cipolletti or rectangular weir which could be made out of aluminum or sheet steel or parshall flume.

Norseth: Prior to adjourning let's sum up the agreement you can live by until formal distribution has been established.

1. Don pace is not required to turn down his Torrey irrigation water for which he utilizes the natural channel of Sand Creek for delivery.

2. The waters of Sand Creek below the Pace diversion will be distributed 50% to the Lowe diversion, 50% to the Park diversion.

3. The split will be made by summing up the amount of water available at each diversion point. Then the diversion of one-half into each.

4. Measuring devices and head gates will have to be installed in each diversion by September 15, 1977 as follows:

- (a) The Lowe diversion will need effective work prior to the installation of a head gate and measuring device. The Park Service agreed to provide labor and perhaps equipment.

- (b) The Park Service agreed to a Parshall Flume.

5. A question of right of way across the Bureau of Land Management ground was brought up. Don Nelson indicated that he would work with the Bureau of Land Management to clear the right of way for the ditch.

6. Grant Chappell was asked to regulate the water as follows:

(a) The interim period that Grant was to meet with the parties was arrived at and a total flow in the creek will be diverted 50% in each diversion.

(b) After the diversions and head gates are installed so that he could then regulate it, he would then keep it regulated at 50-50 until such time that such rights were cleared up.

With the business being over, the meeting was adjourned.

Present at the meeting:

Don Norseth - Division of Water Rights
Mark Page - Division of Water Rights
Grant Chappell - Commissioner
Rulon Hunt - Torrey, Utah
Don W. Page - Torrey, Utah
Martha Hunt - Torrey, Utah
Rulon Jones - Torrey, Utah
Ralph J. Lowe - Ogden, Utah
A. L. & Della Chaffin - Teasdale, Utah
William J. Hawze - NPS - Capitol Reef Nat'l Park
Dick Newgren - NPS - Capitol Reef Nat'l Park
Wm. L. Mehl - NPS - Rocky Mtn. Regional Office, Denver, Colo.
William F. Wallace - NPS, Capitol Reef National Park
Thomas A. Nelson - Solicitor's Office, Dept. of Interior